



**Republic v Teacher Service Commission; Shianzwi (Interested Party) (Judicial Review 2 of 2022) [2022] KEELRC 13378 (KLR) (1 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13378 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA  
JUDICIAL REVIEW 2 OF 2022**

**JW KELI, J  
DECEMBER 1, 2022**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**TEACHER SERVICE COMMISSION ..... RESPONDENT**

**AND**

**JAMES ATEKU SHIANZWI ..... INTERESTED PARTY**

**RULING**

1. Judicial Review No. E002 of 2022 Exparte Chamber Summons Application dated August 26, 2022 sought for leave for grant of the following orders:-
  - i. That the Application be certified urgent and be heard on priority basis and during vacation.
  - ii. That leave be and is hereby granted to the exparte applicant to commence judicial review proceedings against the Respondents for judicial orders of:-
    - a. *Certiorari* to bring into this court the 1<sup>st</sup> Respondent's decision dated 9<sup>th</sup> day of March, 2022 for purposes of quashing the same dismissing the interested party from employment and removing him from the register of teachers.
    - b. An order of *Mandamus* compelling the 1<sup>st</sup> Respondent to reinstate the Interested Party back into employment upon its decision dated March 9, 2022 being quashed.
  - iii. That the grant of leave in 2 above do operate as stay of the 1<sup>st</sup> Respondent's decision of 9<sup>th</sup> day of March, 2022 until the proceedings herein are heard and determined.
  - iv. That costs of the exparte chamber summons be provided for.



2. The matter was placed before Justice Radido who ordered the Application be heard inter-partes when the matter came for directions. The Respondent who had entered appearance had not filed response. Court ordered application be canvassed by way of submissions. The parties complied.
3. The Application under section 10 of *Jurisdiction Act* and Order 53(2) *CPR* is ideally ex parte in chambers.
4. The court has considered the submissions of the parties. The Applicant submission after the disciplinary process of the Respondent he was dismissed from service and decision communicated vide letter dated 9<sup>th</sup> March, 2022.
5. Order 53 Rule 2 of the Union Procedure Rules provides for leave to be granted to apply for order of *Certiorari* to remove any proceedings for purposes of being quashed. Where application is made not later than 6 months after date decision. section 9 (3) of the *Law Reform Act* reiterates application for leave for *Certiorari* Order be made not later than 6 months of the Claim.
6. The Applicant submits he meets the threshold the letter communicating decision being made on March 9, 2022 and application filed August 24, 2022. The 6 months were to lapse on September 7, 2022.
7. To buttress his position he relied on decision on *Pastoli v Leabale District & others* (2008) 2 EA stating the Applicant in Judicial review must demonstrate procedural impropriety which he submits he has in his statement of claim. That deregistration as a teacher was draconian.
8. The Respondent did not file response but submissions despite directions to do so on September 22, 2022.
9. The Respondent submits on fact of fairness option process and whether leave merited.
10. Since no response filed, the court focused on the timelines for *Certiorari* orders. The Respondent submits that the Claimant was dismissed on the December 10, 2022 and decision of March 9, 2022 only upheld the decision.
11. That quashing decision of the March 9, 2022 where leave the dismissed of December 10, 2022 still in place have orders in vacuum.

### **Decision.**

12. The court finds and determines pursuant to order 53 of the company procedure Rules and section 9 of the *Law Reform Act* leave to seek order of *Certiorari* must be made not later than six months of the claim. The court finds that the Applicant was dismissed on the December 10, 2020 vide a letter dated January 18, 2021. The Claimant applied for review of the dismissal decision.
13. On the March 9, 2022 the Respondent communicated decision of the review case and upheld the dismissal and removal from the register of teachers.
14. Consequently the court finds that the dismissal decision was made on December 10, 2020. The instant application is outside the six months.
15. Leave is declined to commence Judicial Review proceedings against Respondent for order of *Certiorari*.



16. The court holds that Order of *Mandamus* sought was hinged on the Order of *Certiorari*. The court holds the entire ex parte Chamber Summons of August 26, 2022 unmerited and is dismissed with costs to the Respondent.
17. The suit is struck out consequently. The court holds that the substantive claim remains unheard and the claim being within 3 years statutory limitation the Claimant is free to file normal claim in pursuant of his rights.
18. The Ex parte Chamber summons dated August 26, 2022 is dismissed with costs to the Respondent.
19. File is ordered closed.
20. It is so ordered.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT BUNGOMA THIS 1<sup>ST</sup> DAY OF DECEMBER, 2022.**

**J. W. KELI,  
JUDGE.**

**In the presence of :-**

Court Assistant: Brenda Wesonga

Claimant : Present in person

Respondent : Mulaku holding brief for Ms Ngare.

